CF0000061503

Cr.A 975/97

XII-189 / (Jail)
J. P. R. 11/94/2,000

Receipt Clerk
High Court, Jabalpur
Rec. No. 2
28 MAY 97

APPEAL OF PRISONER

No. 4673 Name मंगलूराम

Father's name खडकूराम उम्र - 31 वर्ष

Residence - सोनाखान, थाना कसडोल जिला - रायपुर (म. प्र.) Division Bench (Criminal)

Sentenced to आजीवन आरावास रु. 1000 On

Under section 302 भा. दं. वि. 34 भा. दं. वि. by अति. डायर सत्र न्यायाधीश, खर्रीयालामार, जिला रायपुर

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not - Yes / No

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No. 4673 Name मंगलूराम उर्फ खडकूराम

Confined in केन्द्रीय Jail रायपुर (म.प्र.)

No. 139 /1/सेशे/97 Dated 26/4/97 199 7

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अति. सेशोपत्र. रायपुर माननीय उच्च न्यायालय मध्य प्रदेश जबलपुर together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

जबलपुर रिट अपील क्र - 487/97 की प्रमाणित नियमित प्रतिलिपि। ये तथ्यों का अपेक्षित पत्र

Superintendent
Central Jail, Raipur (M.P.)
Superintendent
..... Jail .....

Date of receipt in office 31/5/97

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate Court 17.9

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक Cr A. 975/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 975OF 1997

Appellant : Manglu Ram

Vs.

Respondent : State of Madhya Pradesh

Shri H.P.Agrawal, Advocate with Shri Rajendra Ku. Soni, Advocate appearing on behalf of the accused/appellant.

Shri D.K.Gwalre, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(10.03.2006)

Per L.C.BHADOO, J

By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellant has questioned the legality and correctness of the impugned judgment dated 31.10.1996 passed by Additional Sessions Judge, Baloda Bazar in S.T. No.487/95 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default thereof to further undergo R.I. for one year.

2. Case of the prosecution, in brief, is that Badku Ram gave merg intimation P-14 in the Police Station – Kasdol on 23rd October 1995 at

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about 2.00 p.m. to the effect that there was some quarrel between accused Manglu Ram and his wife Urmila Bai, on which Manglu has assaulted Urmila Bai by a carpenter's axe as a result of which she has died. Receiving this merg intimation Station House Officer, P.S. Kasdol registered the First Information Report P-13 and left for the scene of occurrence. After giving notice P-3 to the Panchas he prepared Panchanama P-4 of the dead body of Urmila Bai. During the police custody the accused gave memorandum P-6 regarding the place where he had kept the carpenter's axe – the weapon of offence and the same was recovered at the instance of the accused under P-7. Bloodstained soil and plain soil was taken into possession from the place of occurrence under P-5. The body of Urmila Bai was sent for postmortem examination to Primary Health Centre, Kasdol where Dr. Ashok Mohan Das (PW-3) conducted postmortem and prepared the postmortem report P-9. The doctor noticed as many as four injuries on the body of Urmila Bai and opined that the cause of death is excessive hemorrhage on account of incised injuries caused by sharp weapon and the death was homicidal in nature. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Baloda Bazar who in turn committed the case to the Sessions Judge, Raipur from where the learned Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused/appellant examined 13 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C in which he denied the circumstances appearing against him in the prosecution case

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and pleaded that he is innocent and has been falsely implicated in the crime. After hearing learned counsel for the respective parties, learned Additional Sessions Judge convicted and sentenced the accused/appellant as mentioned in paragraph -1 of this judgment.

4. We have heard Shri H.P.Agrawal, Advocate with Shri Rajendra Soni, Advocate appearing on behalf of the accused/appellant and Shri D.K.Gwalre, learned Panel Lawyer on behalf of the State/respondent.

5. Homicidal death of Urmila Bai is not in dispute.

6. As far as involvement of the accused/appellant in committing the murder of Urmila Bai is concerned, all the witnesses in this case have turned hostile. Even PW-1 Phooleswari Bai – daughter of the accused and the deceased, who was in the house at the time of incident, has stated that she had not witnessed the crime. Even after declaring her hostile the prosecution has not been able to elicit any circumstance from this witness in order to prove the complicity of the crime in question. PW-2 Kriparam has also turned hostile and has stated that police has not investigated anything in his presence and he signed the papers on the asking of the police. PW-4 Roop Singh has also turned hostile and he has not stated that he witnessed the crime. Similarly PW-5 Bhagwan Singh and PW-12 Rai Singh have also turned hostile. PW-11 Sharadlal has stated that Rai Singh informed him that wife of the accused has been murdered. Therefore, there is no ocular evidence in this case to prove the involvement of the accused in committing the murder of his wife Urmila ~~Bai~~ Bai

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7. The only circumstances pressed into service by learned counsel for the State/respondent is that the *basula* (carpenter's axe) – weapon of offence was recovered at the instance of accused Manglu Ram. Even though the recovery witnesses have turned hostile but the investigating officer has stated that the accused gave memorandum P-6 and in pursuance of that *basula* in question was recovered under P-7.

8. In the first instance, the investigating officer has not proved that as to what kind of information was given by the accused. Moreover, there is no evidence on record to show that the blood found on the *basula* was human blood and that too of the blood group of deceased Urmila Bai, therefore, the recovery of *basula* at the instance of accused does not connect the accused with the crime in question as there is no other evidence on record which connects the accused with the above offence.

9. For the foregoing reasons, we are of the considered opinion that judgment of the trial Court convicting and sentencing the accused/appellant under Section 302 of the IPC suffers from infirmity and the same cannot be sustained.

10. In the result, the appeal succeeds and the same is allowed. Conviction and sentence imposed upon the appellant under Section 302 of the IPC are set aside and the appellant is directed to be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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